

1  
2  
3  
4  
5  
6  
7  
8  
9  
10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA  
12

13 CUSTOM WINDOW COMPANY,  
14 Plaintiff,  
15 v.  
16 5TH AVENUE PARTNERS, LLC, *et al.*,  
17 Defendants.  
18  
19

Case No. 08-cv-1497-L(JMA)

**ORDER GRANTING DEFENDANT’S  
EX PARTE APPLICATION TO  
WITHDRAW AS COUNSEL OF  
RECORD [DOC. 53]**

20 Manatt, Phelps & Phillips, LLP (“Manatt”) is counsel of record for Defendant 5th Avenue  
21 Partners, LLC (“FAP”). Manatt now seeks to withdraw as counsel of record because FAP has  
22 “failed and refused” to make payments on outstanding invoices for attorneys’ fees and expenses,  
23 and also because “there has been a complete breakdown of the attorney-client relationship.” (*Ex*  
24 *Parte* Appl. 3:3–12.)

25 The decision to permit counsel to withdraw is within the sound discretion of the trial  
26 court. *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009). The court must consider  
27 factors such as the reason counsel seeks to withdraw, the possible prejudice caused to the  
28 litigants, and the extent to which withdrawal may delay resolution of the case. *Id.*

1 Failure to pay attorney's fees can be a valid ground for withdrawal. *See Canandaigua*  
2 *Wine Co. v. Edwin Moldauer*, No. 02-cv-06599, 2009 WL 89141, at \*2 (E.D. Cal. Jan.14, 2009);  
3 Cal. Rules of Prof'l Conduct, Rule 3-700(C)(1)(f).

4 Defendant has been given timely notice of the motion. (Osaki Decl. ¶ 4.) Furthermore,  
5 Manatt also obtained an order granting it relief from the automatic stay under 11 U.S.C. § 362  
6 imposed in the related bankruptcy case. Because this case is currently stayed, counsel has taken  
7 reasonable steps to prevent prejudice against FAP. But FAP is an LLC and thus unable to  
8 defend this action *pro se* in this district. *See* Civ. L.R. 83.3(k). Consequently, if FAP does not  
9 obtain new counsel, its answer will be stricken and default shall be entered against it.

10 Accordingly, good cause appearing, the Court **GRANTS** Manatt's *ex parte* application to  
11 withdraw as counsel. The Court further **ORDERS** FAP to obtain counsel within **30 days** from  
12 the issuance of this order. If new counsel does not make a timely appearance on behalf of FAP,  
13 Plaintiff may request an entry of default within **14 days** after the automatic stay is lifted in this  
14 case. Upon entry of default, Plaintiff shall timely contact the chambers of the undersigned to  
15 obtain a hearing date for its motion for default judgment.

16 **IT IS SO ORDERED.**

17  
18 DATED: September 5, 2013

19   
20 M. James Lorenz  
United States District Court Judge

21 COPY TO:

22 HON. JAN M. ADLER  
23 UNITED STATES MAGISTRATE JUDGE

24 ALL PARTIES/COUNSEL INCLUDING

25 5TH AVENUE PARTNERS  
26 4300 CAMPUS DRIVE, 2ND FLOOR  
27 NEWPORT BEACH, CA 92660  
28